

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HODELL-NATCO INDUSTRIES, INC.,)	CASE NO.: 1:08 CV 2755
et al.)	
)	
Plaintiffs,)	JUDGE WELLS
)	
vs.)	
)	<u>MOTION FOR AN ORDER</u>
SAP AMERICA, INC., et al.,)	<u>COMPELLING MEDIATION</u>
)	
Defendants.)	
)	
)	
)	

Now come Defendants, LSI Lowery and IBIS, to move this Court for an Order compelling the parties to participate, in good faith, in Mediation before a mutually agreed upon mediator from the ADR list, or one appointed by the Court if agreement cannot be reached.

A significant amount of fact discovery has taken place. The parties have exchanged hundreds of thousands of documents. Depositions of individuals with significant knowledge of the facts and circumstances that gave rise to this lawsuit have been deposed. By the time mediation is arranged, substantially all of the fact discovery will have been completed. Other than perhaps the specific nature and amount of plaintiffs' damage claims, no one will dispute that the lawyers and parties have sufficient factual information to fully and fairly evaluate the claims and liability issues in this case. As to damages, plaintiff either has or has represented

that it will in short time, produce documentation of “hard damages”, and an expert report on its intangible, i.e., business losses, loss of productivity, etc., damages.

The particular urgency as it relates to these moving defendants is two-fold:

- (1) Their liability policy has a limit of \$1,000,000 (one-million dollars) that is eroding as defense costs incurred are deducted from that limit, and
- (2) Their liability insurance carrier has filed a Declaratory Judgment action in Missouri seeking to exculpate itself from any coverage for plaintiffs’ claims.

The undersigned counsel has made numerous attempts to bring about a voluntary mediation, with no success. It is, therefore, respectfully requested this Court order the parties to mediation by a date certain, with July 31, 2012, being that suggested date, and further that said Order advise the parties that those who do not cooperate in that process may be considered in contempt of court for failing to cooperate.

No party can be forced to make a demand, or forced to make an offer, and it is not the intent of this motion that an Order issue requiring either one. It is simply requested that this Court order the parties to sit down at one place, at one time, in the presence of a Court-sponsored mediator.

Respectfully submitted,

/s/ Roy A. Hulme
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion For An Order Compelling Mediation was filed electronically this 28th day of June, 2012. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system.

/s/ Roy A. Hulme
ROY A. HULME (0001090)